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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION NO.2842 OF 2006

1.Adarsh Shikshan Mandal)
through its Secretary)
a Public Trust registered)
under the Bombay Publie Trust)
Act, 1950 and a Society)
registered under the Society's)
Registration Act, 1860 and)
having its office at Srinivas)
Puna Link Road, Katemanivali)
Kalyan (E), Thane-421 306)..

2.Ideal English High School)
and Junior College, having)
its address at Hanuman Tekdi)
Katemanivali, Kalyan (E),)
Tbhane-421 306)..PETITIONERS

Versus

1.The State of Maharashtara)
through its Secretary, School)
Education Department)
Mantralaya, Mumbai.)

2.Deputy Director of Education)
Balabhavan, Charni Road,)
Mumbai.)

3.Education Officer, School)
Education, Mumbai Region,)

Topiwala Lane, Grant Road,)

Mumbai.)..RESPONDENTS

Mr. C.K. Thomas i/b. M/s.C.K. Thomas & Associates
for the Petitioners
Mr.A.A. Kumbhakoni, Associate Advocate General
with Mr. P.M. Mokashi, AGP for the Respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE: 7TH DECEMBER, 2006

ORAL JUDGMENT:

. Rule. Heard forthwith.

2. The petitioner No.2 is established and administered by the petitioner No.1, and claims to be a linguistic minority institution. The petitioner No.1 is a public trust registered under the Bombay Public Trust Act, 1950 and also under the Society's Registration Act, 1860. The petitioners by an application dated 24th July, 2006 had addressed a communication to the Education Officer, Zilla Parishad to grant them minority status. That application till date has not been disposed of. A representation thereafter was made to the Education Director as also to the Secretary, School Education and Sports Department. Both the representations are dated 27th July, 2006. The petitioners invited the

attention of the Authorities to Government Resolution of 17th July, 2002. In the reliefs as prayed for the petitioners contended that the respondent be directed to consider the petitioners application dated 24th July, 2006 and they be granted minority status to There is a further prayer to declare that the petitioners are a linguistic minority in view of the National Commissioner for Minority Educational Institutions (Amendment) Act, 2006 and as such are entitled to admit students in their minority management quota and also from the open category on merits.

2. Parliament has enacted the National Commission for Minority Educational Institutions Act, 2004 and which is deemed to have come into force on 11th November, 2004. Under that Act by virtue of Section 2(f) minority for the purpose of that Act is a community notified as such by the Central Government. Pursuant to that power the Central Government was pleased to issue a Notification dated 18th January, 2005 notifying the minority communities for the purpose of the Act as (1) Muslims, (2) Christians, (3) Sikhs, (4) Buddists and (5)Zoroastrians (Parsis). By virtue of Section 10 as it then stood notwithstanding anything contained in

any other law for the time being in force, a Minority Educational Institution could seek recognition as an affiliated college of a Scheduled University of its choice. The Schedule contained the names of the various Universities. Section 11 are the functions of the Committee and Section 12 are the powers of the Commission. For the present it is not necessary for us to refer to the provisions. By an Ordinance the Act came to be amended. By the amendment in Section 2 definition of "Appropriate Government has been included and which reads as under:-

> "aa. "appropriate Government" means:-
>
> (i) in relation to an educational institution recognised for conducting its programmes of studies under any Act of Parliament, the Central Government; and
>
> (ii) in relation to any other educational institution recognised for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established."

The other relevant definition which has been

introduced is (ca) which reads as under:-

> "(ca) "Competent authority" means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities."

and clause (da) which reads as under:-

> "(da) "educational rights of minorities" means the rights of minorities to establish and administer educational institutions of their choice."

By the very same Ordinance Section 2 (f) has been omitted. In other words the Notification issued by the Central Government notifying certain religious minorities as minority for the purpose of the Act no longer stands as the very definition of minority has been dropped. The effect thereto would be that minorities are those who fall within the expression as understood in the Constitution of India. Therefore, both religious and linguistic minorities are now amenable to the provisions of the Act.

. Section 10 of Chapter III as it stood has also been substituted by new Section 10. Under the new Section 10 any person who desires to establish a Minority Educational Institution must apply to the Competent authority for the grant of no objection certificate for the said purpose and the Competent authority considering the documents, affidavits or other evidence and after giving an opportunity of being heard to the Applicant decide every application filed under sub-section (1) of Section 10.

. Section 10(3) is relevant and we may reproduce the same, which reads as under:-

> "(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate:-
>
> (a) the Competent authority does not grant such certificate;
>
> or
>
> (b) where an application has been rejected

and the same has not been communicated to the person who has applied for the grant of such certificate.

it shall be deemed that the Competent authority has granted a no object to the Applicant."

. A reading of Section 10, therefore, would make it clear that the authority to grant No Objection Certificate for establishing the minority institution is the Competent Authority appointed by the Appropriate Government. If the Competent Authority does not decide the application in terms of Section 10(3) within ninety days of the receipt of the application then by virtue of the deeming provision it is deemed that the Competent Authority has granted a No Objection Certificate to the applicant. The Ordinance has also introduced new Section 12A. We may only reproduce Section 12A(1) which reads as under:-

"12A(1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent authority for establishing a

Minority Educational Institution, may prefer an appeal against such order to the Commission.

It is, therefore, clear from the reading of the aforesaid sub-section that against an order of the Competent Authority referring to grant a No Objection Certificate, an Appeal willlie to the National Commission.

. For the purpose of deciding the issue in controversy it is not necessary for us to look into other provisions of the Act except Section 12B which reads as under:-

"12B(1) Without prejudice to the provisions contained in the National Minority Commission Act, 1992, where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for grant of such status, the aggrieved person may appeal against such order of the authority to the Commission."

. A co-joint reading of the above provisions would indicate the scheme of the Act as now amended. We may sum up the position would be.

(i) The Appropriate Government has to notify a Competent Authority. Any person desirous of establishing a minority institution must apply to that Competent Authority. That Competent Authority has to decide the application based on the material before it within 90 days by either granting or refusing permission.In that event of refusal, a person aggrieved has a remedy by way of an Appeal to the National Minority Commission. Apart from that if there is an Authority established by the Central Government or State Government for grant of minority status to any educational institution other than that contained under the provisions of the National Minority Commission Act, 1992, an Appeal would lie against such order of the Authority to the Commission. Minority pursuant to the omission of Section 2(f) in the parent Act would mean both the religious and linguistic minorities as understood in the Constitution of India.

3. It would thus be clear that the appropriate Government for the purpose of granting No Objection

Certificate for establishing a Minority Institution is duty bound to appoint a Competent Authority. In the instant case on account of the earlier Act as it stood and the Ordinance, according to the learned Associate Advocate General there was a conflict of views and it is on account of that the Competent Authority has not so far been notified. Considering that the Act has been enacted with the avowed object of granting No Objection Certificate or deciding which institution is entitled to set up minority institution interest of justice would require that the Appropriate Government at the earliest take steps to notify the Competent Authority in terms of Section 2(ca).

4. Considering the above, the reliefs as prayed for by the petitioner cannot be granted. However, considering the importance of the issue we propose to dispose of the petition by issuing the following directions:-

(i) The respondent No.1 within eight weeks from today to notify the Competent Authority under Section 2(ca) of the National Commission for Minority Educational Institutions Act, 2004.

(ii) The petitioner on appointment of the Competent Authority to make an application to the Competent Authority who will dispose of the same according to law.

(iii) Rule made absolute accordingly. However, there shall be no order as to costs.

(**F.I. REBELLO, J)**

(**ANOOP V. MOHTA J).**